

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

SHANE ROBERT ERIC MYRES,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Michael H. Simon, District Judge.

Case No. 6:13-cv-00262-AC

ORDER

United States Magistrate Judge John V. Acosta issued Findings and Recommendation (“F&R”) in this matter on June 8, 2015. Dkt. 39. Judge Acosta recommended that Plaintiff’s motion for attorney fees under the Equal Access to Justice Act be denied because the Commissioner’s position was substantially justified.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendations for "clear error on the face of the record."

Plaintiff timely filed objections (Dkt. 41) to which the Commissioner responded (Dkt. 42). Specifically, Plaintiff contends that the F&R conflicts with this Court's previous opinion (Dkt. 25) in which the Commissioner's decision was reversed and remanded for the immediate award of benefits. The Court has reviewed *de novo* Judge Acosta's Findings and Recommendation, as well as Defendant's objections, Plaintiffs' response, the underlying briefing in this matter, and the Court's previous opinion. The Court agrees with Judge Acosta's reasoning and adopts the Findings and Recommendation.

For those portions of Judge Acosta's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

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CONCLUSION

The Court ADOPTS Judge Acosta's Findings and Recommendations. Dkt. 39. Plaintiff's Motion for fees under the Equal Access to Justice Act (Dkt. 31) is DENIED.

IT IS SO ORDERED.

DATED this 25th day of August, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge